HD TANDEM
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September 18 , 2019

VIA ECFS

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Secretary Dortch:

This letter is a follow-up to HD Tandem's Notice of Ex Parte filed with the Commission on September 16, 2019, reporting on HD Tandem's meetings with Commissioners and Commission staff on September 11 and September 12, 2019 regarding the above referenced proceeding.

The purpose of this letter is to suggest a change to the Commission's newly proposed 6:1 terminating-to-originating traffic ratio, as reflected in the Draft Order in this proceeding.[1] In the Draft Order, the Commission rejected use of a mileage trigger for determining when the 6:1 ratio will apply, stating that it found the mileage trigger to be a "complication" in applying the new measure of entities engaging in "Access Stimulation." A mileage trigger, however, is not a complication, but rather an essential element of the solution to the "Access Stimulation" problem identified by the Commission.

HD Tandem's suggested language revisions are shown below, marked to show changes from the definition of Access Stimulation (Section 61.3 (bbb)) proposed in the Commission's draft *Report and Order*.

61.3 (bbb)

(1)
….

[1] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage,* 33 FCC Rcd. 5466 (2018) ("*Access Arbitrage NPRM.*") Report And Order And Modification Of Section 214 Authorizations ("Draft Order") (Sept. 5, 2019).

(ii) The rate-of-return local exchange carrier or a Competitive Local Exchange Carrier: (A) assesses mileage charges in excess of ten miles, inclusive of miles between the end office and a tandem, on the one hand, and the end office and a remote terminal on the other; and (B) has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month. The ten mile limit referenced in the previous sentence includes all miles from all carriers between the tandem and the end office serving the end user or platform.

(2) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier will continue to be engaging in Access Stimulation until: for a carrier engaging in access stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in access stimulation as defined in paragraph (1)(ii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (1)(ii) of this section, ~~its interstate terminating to originating traffic ratio falls below 6:1~~it ceases to meet the definition for Access Stimulation as defined in that paragraph for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

As demonstrated by HD Tandem and other parties, mileage should be viewed as the central component at issue; indeed, complaints of excessive mileage charges have formed the heart of much of the genesis of this proceeding.[2] The 6:1 ratio should be considered only after the mileage factor is applied.

Further, now that under the Commission's proposed new rules, because LECs will be able to subtend different tandems, allowing IXCs to send traffic a way other than the CEA tandem, LECs will be able to choose a more efficient call path by changing their composite

[2] *See e.g.,* Comments of AT&T, WC Docket No. 10-90, (April 1, 2011) at 5and 30 ("One serious and growing problem that requires the Commission's immediate attention is 'mileage pumping'….providers engage in schemes to designate distant points of interconnection solely to inflate the mileage used to compute the transport component of switched access charges paid by IXCs"); Comments of Sprint, WC Docket No. 10-90, (February 9, 2012) at 5 ("local transport mileage pumping – dragging a call to a far distant interconnection point, even if there is a closer end office or access tandem, merely to inflate the number of local transport miles – remains a significant problem"); Comments of AT&T, WC Docket No. 18-155, (July 20, 2018) at 8-10 ("There is no legitimate economic or engineering reason why carriers — and ultimately consumers — must pay outdated tariffed transport charges to carry incredibly large volumes of traffic to these remote areas") Comments of Inteliquent, WC Docket No. 18-155,(July 20, 2018), at 5-6 ("mileage pumping remains prevalent, and the most effective and appropriate way to address it would be to cap all distance-sensitive mileage charges at ten miles for access stimulation traffic, and to limit the number of tandem terminations that can be charged to two"); Reply Comments of AT&T, WC Docket No. 18-155, (August 3, 2018), at 2-3 ("The NPRM appropriately raises concerns regarding other arbitrage schemes involving mileage pumping and daisy chaining. The Commission can and should act to end these arbitrage abuses.") Reply Comments of Aureon, WC Docket No. 18-155, (August 3, 2018), at 18-19 ("Aureon has no objection to limiting the distance-sensitive transport rates charged by access-stimulating LECs to 10 miles.")

mileage, the combination of tandem and end office mileage. Mileage limits have the additional benefit establish a crystal clear measure by which LECs can determine their compliance with the Commission's Access Stimulation rules and address the unintended consequences of over-inclusiveness that would result from the proposed stand-alone 6:1 measure.

Respectfully Submitted,
/s/ David Erickson
David Erickson
President

Cc:

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